

Senate Bill 378

By: Senators Carter of the 1st and Hawkins of the 49th

A BILL TO BE ENTITLED
AN ACT

To amend Article 1 of Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to insurance generally, so as to define certain terms; to provide for health insurance coverage for nonformulary drug products for a limited supply under certain conditions; to provide for statutory construction; to provide for enforcement by the Commissioner of Insurance; to provide for monetary penalties for violations; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 1 of Chapter 24 of Title 33 of the Official Code of Georgia Annotated, relating to insurance generally, is amended by adding a new Code section to read as follows:

"33-24-59.13.

(a) As used in this Code section, the term:

(1) 'Health benefit plan' means any individual or group plan, policy, or contract for health care services issued, delivered, issued for delivery, or renewed in this state by a health benefit plan provider, including, but not limited to, those policies, plans, or contracts executed by the State of Georgia on behalf of state employees under Article 1 of Chapter 18 of Title 45.

(2) 'Health benefit plan provider' means an insurance company, carrier, or similar third-party payor plan.

(b) Every health benefit plan that is delivered, issued, executed, or renewed in this state or approved for issuance or renewal in this state by the Commissioner on or after July 1, 2010, which provides coverage for prescription drugs shall ensure that if a physician prescribes a drug product that is not on the health benefit plan provider's formulary for the patient's health benefit plan, a pharmacist may dispense such prescribed drug product and the health benefit plan provider shall cover such nonformulary drug product for up to a ten-day supply for each prescription but not more than once per year in order to allow time

for the pharmacist or patient to obtain prior approval from the health benefit plan provider or its pharmacy benefits manager for the prescribed drug product; provided, however, that the health benefit plan provider shall not impose any penalty against the pharmacist or the patient. Patients shall not be charged a copay or coinsurance that is greater than the preferred drug amount or 25 percent of the wholesale acquisition cost of the drug, whichever is lower.

(c) Every health benefit plan that sends a communication to a physician or patient about the use of a prescription or nonprescription medication recommending a change in therapy shall assure that the communication is truthful, accurate, and nonmisleading, while reflecting a fair balance of the benefits and risks of any medication, as required by the Federal Food, Drug and Cosmetic Act (FDCA) regulations. Statements in a communication that express the opinion of the health benefit plan or its agent shall be clearly attributed and identified as opinion statement, while clinical, market research, or other data reference in such a communication shall be clearly identified and the sources of such research data shall be provided in legible type. Other than a communication being issued because of a product recall or withdrawal, or other similar expression of safety concern on the part of the manufacturer of the prescribed medication or the federal Food and Drug Administration, such written communication shall have clearly printed in bold type on the first page the following legend: 'This is not a product safety notice. This is a promotional announcement from your health care insurer about one of your current medications.'

(d) Nothing in this Code section shall be construed to require any health benefit plan to include coverage for prescription drugs.

(e) The Commissioner is authorized to enforce this Code section and shall be authorized to impose on a health benefit plan provider a monetary penalty of \$500.00 for a violation of this Code section. If a monetary penalty is imposed by the Commissioner on a health benefit plan provider pursuant to this subsection, the health benefit plan provider may invoke the right to an administrative hearing in accordance with Chapter 2 of Title 33. Further, the Commissioner may exercise the powers granted by Code Section 33-2-24 and any other provision of this title."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.